

SENATE BILL 108
By Cohen

AN ACT to amend Tennessee Code Annotated, Title 40,
relative to videotaping or recording certain police
interrogations.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 40, Chapter 7, is amended by adding
the following as a new part:

Section 40-7-301. It is the intention of the general assembly to reduce the risk of false
confessions, to improve the administration of justice, and to better the relationship between law
enforcement officers and the communities they serve.

Section 40-7-302. As used in this act, unless the context otherwise requires:

(1) "Custodial interrogation" means any interrogation during which:

(a) a reasonable person in the subject's position would consider himself
or herself to be in custody; and

(b) words or actions are used that are reasonably likely to elicit an
incriminating response.

(2) "Electronic recording" includes digital recording, videotape recording or any
other method that accurately documents the interrogation being recorded.

(3) "Place of detention" means:

(a) a building or a police station that is a place of operation for a municipal
police department or county sheriff department or other law enforcement agency
at which persons are or may be held in detention in connection with criminal
charges against those persons; or

(b) any location the accused is actually prohibited from leaving or understands to be prohibited from leaving until such permission is granted by a law enforcement officer.

(4) "Statement" includes any oral statement, written statement, sign language statement, or other nonverbal statement intended as an assertion.

Section 40-7-303.

(a)

(1) Unless waived in accordance with subdivision (a)(2), any statement of an accused made as a result of custodial interrogation at a place of detention shall be inadmissible as evidence against the accused in any felony criminal proceeding unless it is electronically recorded, is not altered and is substantially accurate.

(2) The accused may waive in writing his or her right to electronic recording during custodial interrogation.

(b)

(1) Every electronic recording required under this section or waiver of such must be preserved until such time as the defendant's conviction for any offense relating to the statement is final and all direct and habeas corpus appeals are exhausted, or the prosecution of such offenses is barred by law.

(2) Electronic recordings shall be catalogued and maintained by each county in a central location in such county.

(3) Any electronic recording of any statement made by an accused during a custodial interrogation that is compiled by any law enforcement agency as required by this section for the purpose of fulfilling the requirements of this section shall be confidential and exempt from public inspection and copying, as

provided under section 7 of the Freedom of Information Act and under the provisions of title 10, chapter 7, and the information shall not be transmitted to anyone except as needed to comply with this section or at the accused's request.

(c) If the court finds, by a preponderance of the evidence, that the defendant was subjected to a custodial interrogation in a place of detention in violation of this section, then any statement made by the defendant during or following that non-recorded custodial interrogation, even if otherwise in compliance with this section, is inadmissible in any criminal proceeding against the defendant except for the purposes of impeachment.

Other evidence discovered as a result of statements made in violation of this section shall be inadmissible.

(d) Nothing in this section precludes the admission of a:

(1) Statement made by the accused in open court at his or her trial, before a grand jury, or at a preliminary hearing;

(2) Voluntary statement, whether or not the result of a custodial interrogation, that has a bearing on the credibility of the accused witness;

(3) Spontaneous statement that is not made in response to a question;

(4) Statement made after questioning that is routinely asked during the processing of the arrest of the suspect;

(5) Statement made during a custodial interrogation that is conducted out-of-state; or

(6) Statement given at a time when the interrogators are unaware that a felony investigation may be required.

(e) The state has the burden of proving, by a preponderance of the evidence, that one of the exceptions described in either subsections (a), (d) or (g) is applicable.

(f) Nothing in this section precludes the admission of a voluntary statement, otherwise inadmissible under this section, that is used only for impeachment and not as substantive evidence.

(g) The presumption of inadmissibility of a statement made by a suspect at a custodial interrogation in a place of detention may be overcome by preponderance of the evidence that the statement was a result of good faith custodial interrogation and exigent circumstances existed preventing electronic recording.

Section 40-7-304. This act shall not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before its effective date.

Section 40-7-305. The provisions of this act are declared to be remedial in nature and all provisions of this act shall be liberally construed to effectuate its purpose.

SECTION 2. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 3. This act shall take effect January 1, 2007, the public welfare requiring it.